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09/647,700	10/03/2000	Birgitte Hansen	36636-166652	1109

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/647,700

Applicant(s)

BIRGITTE HANSEN ET AL.

Examiner

YVONNE M. HORTON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 19, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 12/19/02 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the cap member being retained at its upper end "solely" by an upper covering cap. Page 1, lines 5-13 clearly detail that the covering is secured to the wood components by engagement means and securing means. Use of an engagement means and a securing means does not support the implication of "sole" attachment. Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "hood-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "hood-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

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***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-7,10,11,13 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Swedish Patent #374578. 374578 discloses a cap member (14,16) having hidden (21) bent portion (40) that engages an engagement means (20) disposed on and covering all sides of a wooden side member (15); wherein the cap members (14,16) are dismountable and secured to the side members (15) by its lower end or undersurface, solely, by engagement means (20). 374578 discloses the basic claimed cap cover except for the bent portion being integral therewith and except for the position of the bent portion. In regards to the bent portion (21,40) not being integral with the cap (14,16), it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct a formerly integral structure in various elements, since it involves only routine skill in the art. Clearly, the engagement means (20) having the bent portion (40) is disposed at a lower end/ undersurface of the cap member. Regarding claim 2, the cap (14) pivots, see figure 7. In reference to claim 3, the cap is secured to an upper portion (12) a lower portion (13) and side portions (15) of an opening (11) by fittings (F) and securing means (20,21), see marked attachment. In regards to claim 4, the brackets (20,21) have apertures; however, the apertures are not key-hole apertures. Keyhole apertures are old and very well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art to provide the assembly of 374578 with a keyhole aperture in order to provide the cap with a

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means for adjustability. In reference to claims 5 and 6, the securing means are screw holes and the fittings are fasteners (F). Regarding claims 7 and 10, the cap is U-shaped with integral bottom (B) and side walls (S). In reference to claim 11, the engagement means (20) has a bent flange (38) wherein the engagement means (20) is parallel to the wall. Regarding claim 13, the cap is for a top hung window (11) made in two portions - an upper portion (24) and a lower portion (25). In reference to claim 14, the frame is secured by screws (F). Without a translation it is unknown what the material of the cap is formed from. However, it would have been an obvious matter of design choice to one having ordinary skill in the art to select a known material on the basis of its suitability for the use intended.

### *Response to Arguments*

6. Applicant's arguments filed 12/19/02 have been fully considered but they are not persuasive.

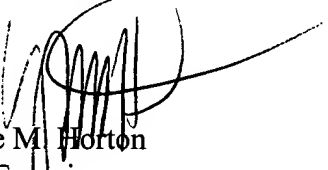
In regards to the applicant's argument that it would not be obvious to form the cap of the Swedish Patent 374578 as an integral structure because the engagement members (20) do not contact the cover (16) due to member (30), clearly in figure 8 (the circled area), cap member (16) contacts engagement member (20). Thus, it would have been obvious to form the two members (16) and (20) as one member wherein a space (S), see the marked attachment, would be formed for receipt of members (29,30). Hence the member (29,30) would not be interfered.

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Regarding applicants argument that the cap of 374578 may not be integral de to screws (19), screws (19) have nothing to do with members (16 and 20) except for attaching member (16) and therefore would not interfere with the members (16) and (20) being formed as one piece. Member (16) would still be capable of end attachment as at (19).

In response to the applicant's argument that the cap of 374578 is not dismountable or solely attached, clearly, member (16) is attached to the side members (15) solely by member (20) on its lower end/undersurface. Further, the specification requires use of a securing means and 374578 shown the use of a securing means (F), see the marked attachment. Even though securing means (19) and (F) are used, obviously, the securing means are capable of removal, thus allowing for dismountability of the cap member.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.



Yvonne M. Horton  
Patent Examiner  
Art Unit 3635  
March 17, 2003

